STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

City of Columbia, Illinois	)	
	)	
-vs-	)	
	)	
Illinois-American Water Company	)	Docket No. 00-0679
	)	
Complaint as to providing services outside of the utility's certificated service area outside Columbia, Illinois	)	

REPLY BRIEF OF ILLINOIS-AMERICAN WATER COMPANY

Respondent, Illinois-American Water Company, submits this reply brief pursuant to 83 Ill. Admin. Code 200.800, in response to the Initial Brief filed by the City of Columbia on April 10, 2001.

STATEMENT OF FACTS

The material facts of this case are not in dispute. Illinois-American Water Company (Illinois-American) has an existing 12-inch water main on the south side of Illinois State Route 158 between Quarry Road and Centreville Road. (IAWC/Columbia Jt. Exh. 1) In Docket No. 96-0353, the Illinois Commerce Commission (ICC) granted Illinois-American a Certificate of Public Convenience and Necessity to provide water service to and including the north right-of-way line of Illinois State Route 158. (Jt. Exh. 1) Three residential water customers reside on the north side of Illinois State Route 158 between Quarry Road and Centreville Road. (Jt. Exh. 1) Illinois-American has bored two house service lines off its 12-inch water main on the south side of Illinois State Route 158 to provide service to the residences of the Boyles at 631 State Route 158 and the Dawsons at 625 State Route 158. (Jt. Exh. 1) Although the service connections for these

two customers are within Illinois-American's certificated area, the physical residences of these two customers are located outside of the area certificated to Illinois-American. (Jt. Exh. 1) Service lines owned by the two customers do not cross property owned by any other party. (Jt. Exh. 1) The cost for Illinois-American to provide service to the two customers was less than the estimated cost for Columbia to construct Phase III of its water service project to provide service to these customers. (IAWC Exh. 1, Tr. pp. 47-49; 71-76; 88-89, 90) (See also Columbia's Brief, p. 3) And, in order to be in a position to construct Phase III of its project, Columbia would first have to construct Phase II at an additional cost of $40,000. (Tr. pp. 34-35)

Illinois-American can provide superior fire protection service from its existing 12-inch main than Columbia could from its proposed 6-inch main. (Tr. p. 75) Because Columbia would have to construct at least Phase II before it could provide fire protection service, Illinois-American can provide fire protection sooner. (Tr. p. 71)

In its brief, Columbia stated that it intends to pay Illinois-American's stranded costs and to take over service to the two customers. (Tr. pp. 48, 53, 58, 62, 63) (See also Columbia's Brief, p. 4) However, Columbia has not indicated a dollar amount that should be paid to Illinois-American as its stranded costs. Columbia proposes that it would purchase the potable water from Illinois-American at the special tariff rate that Illinois-American charges the Metro East Municipal Joint Actions Water Agency (MEMJAWA) rather than pay Illinois-American's general tariff rate. (Tr. p. 49) (See also Columbia's Brief, pp. 4-5)

ARGUMENT

1. Illinois-American has not violated the Public Utilities Act.

Illinois-American has not violated the Public Utilities Act by providing service to the Boyle and Dawson residences. The need for water service to the customers is demonstrated by the request by the customers for service and Columbia's proposal to provide service. These customers were not served by any other water purveyor, nor are any other water purveyors in a position to provide service. The arguments and supporting authority for Illinois-American's position have been fully addressed in its previously submitted brief.

In support of its position that Illinois-American has violated the Public Utilities Act, Columbia argues that the Commission should rely upon the Electric Service Suppliers Act and Columbia cites three cases, *Palmyra Telephone Company v. Modesto Telephone Company,* 336 Ill. 158, 167 N.E. 860 (1929); *Illinois Power Company v. Walter*, 75 Ill. App. 2d 432, 220 N.E. 2d 755 (1966); *Central Illinois Public Service v. Illinois Commerce Commission,* 202 Ill. App. 3d 567, 560 N.E. 2d 363, 148 Ill. Dec. 61 (1999). The City's reliance on those cases and the Electric Service Suppliers' Act is unfounded.

The Public Utilities Act has been held to be a derogation of common law and nothing is to be read into it by intendment. *Consumers Sanitary Coffee And Butter Stores v. Commerce Commission,* 348 Ill. 615, 181 N.E. 411 (1932). Therefore, the Act is to be strictly construed in favor of the entity sought to be subject to its provisions. *Barthel v. Illinois Central Gulf R.R.*, 74 Ill. 2d 213, 384 N.E.2d 323 (1978); *Diamond v. General Telephone Co.*, 211 Ill. App. 3d 37, 569 N.E.2d 1263 (1991); *Turgeon v. Commonwealth*

Edison Co., 258 Ill. App. 3d 234, 630 N.E.2d 1318 (1994). The Act and regulations should not be interpreted as imposing more onerous conditions than the Act or Commission's regulations mandate.

Columbia, itself, admits that the Electric Suppliers' Act does not apply to Illinois-American. Nonetheless, Columbia argues that even though the Electric Suppliers' Act does not apply that the Commission should rely upon it as being analogous. Illinois-American disagrees. The fact that an electric utility may elect to obtain a certificate of public convenience and necessity is not controlling on whether the Electric Suppliers' Act applies to water utilities. Providing water service to new customers is governed by the Public Utilities Act and 83 Ill. Admin. Code 600.370, adopted pursuant thereto.

It is worth noting, however, that even under the Electric Suppliers' Act, when determining which supplier is entitled to furnish the proposed service, the Commission gives substantial weight to which supplier had existing lines in proximity to the premises proposed to be served. 220 ILCS 30/8. The Commission also considers the customer's preference; which supplier was first furnishing service in the area; the extent to which each supplier assisted in creating demand for service; and which supplier can furnish the proposed service at the least cost. No weight or consideration is given to the fact that a supplier has or has not been issued a certificate of public convenience and necessity. 220 ILCW 30/8. Using these considerations, Illinois-American should be permitted to serve these customers. Illinois-American has an existing water main in proximity to these customers. Columbia would have to complete Phases II and III of its planned extensions to serve them. The customers requested that Illinois-American provide water service.

Columbia concedes that Illinois-American's facilities are the least cost means of providing service.

In addition, the Electric Suppliers' Act provides that the electric utility does not need to go through the notice provisions for extending service if the extension of service is limited in distance and voltage and does not bring the service lines any nearer to the existing lines of another supplier. See, 220 ILCS 30/7. There are only three potential customers' in a position to receive service in this manner. Contrary to Columbia's assertion, Illinois-American is not attempting to encroach into large areas served by other water purveyors.

In *Illinois Power Company v. Walter, supra*, the court determined that Illinois Power Company could not rely upon the power of eminent domain to condemn an easement over a strip of land owned by defendants. In that case, the certificate of public convenience and necessity granted Illinois Power an area for the transaction of electric public utility business along a route not to exceed a distance of 1/2 mile from the area. The delivery point that Illinois Power was attempting to reach through power of eminent domain was 1½ miles south of the existing line. Because Illinois Power did not have a certificate of public convenience and necessity to serve the territory, which included the properties at issue, Illinois Power did not have power to condemn the right-of-way through eminent domain. Obviously, these facts are quite different than those involved in this case. Illinois-American has not sought to extend facilities or acquire property one inch past that in which it is certificated to serve, let alone 1½ miles.

In fact, this is exactly the distinction that Illinois-American made with regard to its customers on the west side of Highway Route 3 between Columbia and Waterloo.

(IAWC Ex. 2, pp. 2-3; Tr. pp. 92-93) In that situation, the boundary of Illinois-American's certificated area was the eastern right-of-way line of Illinois Route 3. The customers' properties were located west of the right-of-way line of Illinois Route 3. Between the Route 3 right-of-way line and the customers' properties was a county road. Illinois-American had to run a service line through two right-of-ways for which it was not certificated, initially, to provide service to the customers requesting service. Illinois-American sought and obtained a temporary certificate to provide emergency service to those customers while it concluded a proceeding to obtain a permanent certificate which allowed it to serve those customers and others. (IAWC Exh. 2, pp. 2-3; Tr. pp. 92-94)

In the present case, Illinois-American did not extend its facilities beyond the area that it was already certificated to serve. And, while the customer service lines may extend beyond the area certificated for service by Illinois-American, the point of sale occurs within the certificated area and the customer service lines do not cross property, which is not owned by the customer. See, 83 Ill. Admin. Code 600.370(c)(2). Columbia argues that Illinois-American believes that it need only seek a certificate of public convenience and necessity when its facilities will cross the property owned by another. But Columbia has mis-interpreted Illinois-American's position. The issue is whether the customer's service lines will cross property owned by another, as prohibited by Part 600.370(c)(2). Since the service lines do not violate this rule, and the point of connection is within the area certificated to Illinois-American, the company has complied with all applicable rules and must be allowed to serve. To rule otherwise would impose more onerous conditions than the Act or regulations mandate and, thus, violate the principles in *Barthel, Diamond* and *Turgeon, supra.*

The facts in *Central Illinois Public Service Company v. Illinois Commerce Commission*, which was cited by Columbia, were that two electric suppliers, Southwestern and CIPS, entered into a service area agreement. A customer located within the area designated to Southwestern under the service agreement disconnected its electrical tie lines from Southwestern. The customer connected to CIPS's lines and purchased electricity from CIPS within the area designated to CIPS under the service agreement. The customer used its own distribution system to transport the electricity to the facilities located inside Southwestern's area. The Commission and the court found that CIPS's sales to this customer in this manner violated the *service area agreement*. *CIPS*, 560 N.E.2d at 365. (Emphasis added.) Further, CIPS's electric service to the customer was duplicative and inefficient. *CIPS*, 560 N.E.2d at 367. The Commission determined that to hold otherwise would result in duplicative facilities, idle capacity and wasted economic resources and higher electric rates. *CIPS*, 560 N.E.2d at 368.

In addition to the fact that Illinois-American is not an electric supplier and therefore not subject to the Electric Suppliers Act, the analysis in CIPS's case supports that Illinois-American should provide service to these customers. At the time these customers sought service there was no other water purveyor available to provide service to them. Further, Columbia's proposed construction plan would create the duplicative facilities and wasted economic resources. Finally, there is no service area agreement involved in this case; and such agreements have been found ineffective for water purveyors. *Town of Stookey v. East St. Louis & Interurban Water Co.*, 33 Ill. App. 2d 238, 179 N.E.2d 43 (1961)

The court in *Palmyra Telephone Company v. Modesto Telephone Company*, found that Modesto did not violate the Public Utilities Act by extending service to customers within the Palmyra service area during the period that Palmyra Telephone was out of operation. The court found that, as to those customers that the service was extended to after Palmyra was back in service and had obtained a certificate of Public Convenience and Necessity to serve in the area, Modesto had to discontinue service. In this case, however, Illinois-American is the only water purveyor in a position to provide service to these customers, currently.

Columbia argues that these customers are within 1000 feet of the city limits and Columbia expects to annex an area that includes these residences in the future. (Tr. pp. 65-66) That evidence is irrelevant. Four months prior to the Columbia's December 18, 2000 annexation of the area, which brings the city limits within 1000 feet of these customers, Illinois-American installed the facilities that serve the Dawson property. (IAWC Exh. 3) These customers remain outside the city limits and are not able to receive water service from any other purveyor.

The hypothetical in Columbia's Brief is not an accurate statement of Illinois-American's position. Columbia poses the question whether, without any additional certification from the regulatory authority, Illinois-American would have the right to serve a 300-acre tract of property to be developed as a planned unit development that has a one-foot contiguity to a boundary of an area certificated to Illinois-American. The hypothetical is not analogous to this situation. A planned unit development means property developed as a single entity, containing one or more residential clusters and one or more public or industrial areas. (See, Blacks' Law Dictionary) By necessity in a

planned development, the water facilities would cross property owned by another person and, therefore, would not be in compliance with the requirements applicable to water utilities as set forth in 83 Ill. Admin. Code 600.370(c)(2). At the hearing on March 15, 2001, this question was posed to Karen Cooper who testified that under these circumstances Illinois-American would seek a certificate of public convenience and necessity. (Tr. pp. 99-100)

2. Illinois-American can provide superior fire protection service.

Columbia concedes that fire protection from Illinois-American's existing 12-inch main would be superior to its proposed service from a 6-inch main, which has yet to be constructed. (Tr. p. 75)

3. Assuming that the Commission determines that Illinois-American cannot provide service in this manner, which it should not, Illinois-American is entitled to its stranded costs.

Columbia proposes that it be allowed to serve these customers by paying Illinois-American's stranded costs and serving these customers at the MEMJAWA sale-for-resale tariff rate. (Columbia's Brief) Columbia argues that to charge the general tariff rate would treat these customers differently than their neighbors in Columbia and will unjustly enrich Illinois-American. There is no basis for such allegations. In fact, if Columbia were allowed to pay the MEMJAWA rate for these connections, it would be to the detriment of Illinois-American's other customers who are required to pay the full cost of service. These customers are paying the rates approved by the Commission for retail customers in Illinois-American's Interurban District. As the connections at issue are no different, the rates should also be the same. The rate approved under the MEMJAWA

agreement was based upon the fact that MEMJAWA had a competitive alternative. There is no competitive alternative in this case.

Columbia argues that by January 2003 it will be entitled to receive one million gallons per day off the Illinois-American's Millstadt to Waterloo 12-inch water line to provide retail service to its customers in the *subject region*. (Emphasis added)(Tr. p. 55) However, the three connections at issue in this docket were not contemplated nor authorized in the agreement with MEMJAWA. The only authorized connections are set forth in the MEMJAWA service agreement as follows:

> (3) Millstadt/Waterloo Transmission Main Connection(s).
>
> The City of Columbia, Illinois, ("Columbia") which is a member of MEMJAWA, shall be given the opportunity and the right to connect to and to take and purchase water from the IAWC sixteen (16) inch diameter transmission main located and installed between the Village of Millstadt and the City of Waterloo, (the "M & W Line") at a meter vault to be located and installed west of State of Illinois Highway Route 158 near Centerville Road, in an easement to be obtained by Columbia such connection shall be on the following terms:
>
> (a) IAWC will construct and install a twelve (12) inch diameter transmission line for Columbia's use in connecting to the M & W Line at the location stated above and IAWC will pay a sum equal to the cost to construct and install an eight (8) inch diameter transmission line therefor (estimated cost $104,000) and Columbia will pay for the difference in the cost for the twelve (12) inch diameter over sizing of the line (estimated cost $34,075). IAWC will make a diligent and good faith effort to have the line extension installed within six (6) months after November 5, 1998 when the ICC approved the CST.
>
> (b) From this connection, Columbia shall be permitted to take and purchase a minimum of 120,000 gallons per day (0.12 MGD) at a flow rate of 80 gallons per minute ("GPM"). This will be the maximum volume which IAWC expects will be available during IAWC's periods of high demand. IAWC shall allow Columbia to take and purchase a larger

quantity of water from such point of interconnection, when such water may prudently be provided at such point of interconnection without hindrance to the remainder of IAWC's system. (IAWC estimates that 300,000 gallons per day (0.30 MGD) will be available at a flow rate of 210 gallons per minute ("GPM") during periods of lower demand on its system.) By January 1, 2003 A.D., the minimum volume of water which Columbia may take and purchase from the M & W Line shall be increased to one million gallons per day (1.00 MGD) at a flow rate of 700 GPM, as a result of system enhancements IAWC will make to its system, at no additional cost to Columbia.

(c) All water purchases for water the Agency or an Agency member takes off of the M & W Line shall come under this Agreement and shall be and be regarded as water sold to MEMJAWA for the price and on the terms established for water sales by IAWC to MEMJAWA under this Agreement and the CST.

(4) Edgar Street and Route 3 Connection

Columbia shall be given the opportunity and the right to connect to and to take and purchase water from an eight (8) inch diameter IAWC transmission main located and installed at or near the intersection of Edgar Street and State of Illinois Highway Route No. 3 in the Village of Cahokia, Illinois. Should Columbia like to obtain water from IAWC at that location, Columbia will be required to pay for the meter vault and IAWC will be required to pay for the installation and maintenance of the meter without assessment of a monthly meter service charge to the Agency or Columbia. All water received by Columbia at this connection shall come under this Agreement and shall be and be regarded as water sold to MEMJAWA for the price and on the terms established for water sales by IAWC to MEMJAWA under this Agreement and the CST. (Exh. A to IAWC's Brief, pp. 2-3)

Thus, the MEMJAWA agreement does not contemplate the three residential connections at issue in this docket. Further, the MEMJAWA service agreement provides that nothing shall be changed in the service agreement except by a written agreement executed by both parties to the agreement. (Exh. A to IAWC's Brief, p. 9)

Columbia proposes that it serve these customers in exactly the same manner that Illinois-American currently is serving them. Columbia's argument seems to be that it is unlawful for Illinois-American to provide service in this manner but lawful for Illinois-American to provide the service to Columbia for resale to these customers. Columbia fails to explain what the difference is. If Columbia's complaint is that these connections are outside the certificated area, the connections do not become within the certificated area if Columbia receives the service for resale.

CONCLUSION

Illinois-American has not violated the Public Utilities Act. Service to the customers at issue is in accordance with the Public Utilities Act and the applicable regulations. Illinois-American is the only purveyor currently able to provide service and that service is the least cost means of providing service to these customers.

Should the Commission determine that Illinois-American cannot provide service to these customers in the present manner, Illinois-American reserves the right to seek a temporary certificate of public convenience and necessity to provide service to these customers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Sue A. Schultz, do hereby certify that a copy of the attached Reply Brief of Illinois-American Water Company has been served upon each of the following, via electronic mail and overnight mail delivery, this 14th day of May, 2001:

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